

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region II

290 Broadway - 17th Floor
New York, New York 10007-1868

FACSIMILE REQUEST AND COVER SHEET

TO: Dennis Toft / Sharon Weiner
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FROM: Muthu S. Sundaram
OFFICE: Office of Regional Counsel
New Jersey Superfund Branch
PHONE: 212-637-3148
FAX: (212) 637-3096 Confirmation (212) 637-3251
DATE: 3/31/99
SUBJECT: LCP - ACO Revisions
Number of Pages (including cover sheet):

Message:

As per our discussion this ~~morning~~ ^{afternoon}.

Plurkin

P.S. upon hearing from you, I'll fax the full
version of ACO for signature.

ML

346178



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New York, New York 10007-1866**

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VII. WORK TO BE PERFORMED

25. Respondent shall conduct the work required hereunder in accordance with CERCLA, the NCP, and EPA guidance including, but not limited to, the "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive No. 9355.3-01) (hereinafter, the "RI/FS Guidance"), "Guidance for Data Useability in Risk Assessment" (OSWER Directive #9285.7-05) and guidances referenced therein, as they may be amended or modified by EPA. The general activities that Respondent is required to perform are identified below, followed by a list of deliverables. The tasks that Respondent must perform are also described in the attached Statement of Work ("SOW") and more fully in the guidance documents, and will be described in detail in an RI/FS work plan to be submitted as a deliverable under this Consent Order. The activities and deliverables identified below shall be developed as provisions in such work plan, and shall be submitted to EPA as provided. All work performed under this Consent Order shall be in accordance with the schedules herein, and in full accordance with the schedules, standards, specifications, and other requirements of the work plan and sampling and analysis plan, as initially approved by EPA, and as they may be amended or modified by EPA. For purposes of this Consent Order, day means calendar day unless otherwise noted in this Consent Order.

A. **Task I: Scoping.** EPA has determined the site-specific objectives of the RI/FS and has devised a general management approach for the Site, as stated below and in the attached Statement of Work. Respondent shall conduct the remainder of scoping activities as described in the attached Statement of Work and referenced guidances. As part of the scoping activities, Respondent shall provide EPA with the following deliverables:

1. **RI/FS Work Plan and Schedule.** Within **thirty (30) days** of the effective date of **gaining access to the Site as provided in Paragraph 50 of this Consent Order**, Respondent shall submit to EPA a work plan for the performance of the RI/FS (hereinafter, the "RI/FS Work Plan") which includes, among other things, a detailed schedule for the RI/FS. The work plan shall provide for the completion of the final FS report not more than twenty-four (24) months following approval of the FOP. If EPA disapproves of or requires revisions to the RI/FS Work Plan in whole or in part, Respondent shall amend and submit to EPA a revised work plan which is responsive to the directions in all EPA comments, within thirty (30) days of receiving EPA's comments. Respondent may invoke the dispute resolution procedures set forth in Section XVII below, in the event of a dispute between Respondent and EPA regarding EPA's disapproval of, or required revisions to, the RI/FS Work Plan.

XIII. SAMPLING, ACCESS AND DATA AVAILABILITY/ADMISSIBILITY

50. If any area to which access is necessary to perform work under this Consent Order is owned in whole or in part by parties other than those bound by this Consent Order, Respondent shall obtain, or use best efforts to obtain, access to the Site **within sixty (60) days** of the effective date of this

Consent Order. Such agreements shall provide access for EPA, its contractors and oversight officials, NJDEP and its contractors, and Respondent or its authorized representatives, and agreements for such access shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. Copies of such agreements shall be provided to EPA upon request prior to Respondent's initiation of field activities. If access agreements are not obtained within the time referenced above, Respondent shall immediately notify EPA of its failure to obtain access. EPA may, in its sole discretion, obtain access for Respondent, perform those tasks or activities with EPA contractors, or terminate this Consent Order in the event that Respondent cannot obtain access agreements. In the event that EPA performs those tasks or activities with EPA contractors and does not terminate this Consent Order, Respondent shall reimburse EPA for all costs incurred in performing such activities and shall perform all other activities not requiring access to the given property. Respondent additionally shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables. Furthermore, Respondent agrees to indemnify the United States as specified in paragraph 92 of this Consent Order. Respondent shall also reimburse EPA pursuant to paragraph 76 for all costs and attorney fees incurred by the United States in its efforts to obtain access for Respondent.

XVII. DISPUTE RESOLUTION

60. Any dispute concerning activities or deliverables required under this Consent Order, excluding the baseline risk assessment, shall be resolved as follows: **The dispute shall in the first instance be the subject of informal negotiations between EPA and the Respondent and the period for such informal negotiation shall not exceed 20 days from the time the dispute arises. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding sentence, the position advanced by EPA shall be considered binding unless, the Respondent notifies EPA's Project Coordinator, in writing, of its objections within five (5) days of after the conclusion of the informal negotiation period.** Respondent's written objections shall define the dispute, state the basis of Respondent's objections, and be sent to EPA by certified mail, return receipt requested. EPA and Respondent then have an additional fourteen (14) days to reach agreement. If an agreement is not reached within the fourteen (14) days, Respondent may, within seven (7) days of the conclusion of the aforementioned fourteen (14)-day period, request a determination by the Chief of the New York Remediation Branch of the Emergency and Remedial Response Division, EPA Region II (hereinafter, the "Chief"). Such a request by Respondent shall be made in writing. The Chief's determination is EPA's final decision. Respondent shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondent agrees with the decision. If Respondent does not agree to perform or does not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself and seek reimbursement from Respondent of the costs of that work, to seek enforcement of the decision, to seek stipulated penalties, and/or to seek any other appropriate relief. **Stipulated penalties, provided in Section XVIII of this Consent Order, with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in this paragraph. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Order. In the event that the Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVIII of this consent order.**

61. Respondent is not relieved of its obligations to perform and conduct activities and submit deliverables on the schedules which are approved by EPA and applicable to the work required pursuant to this Consent Order, while a matter is pending in dispute resolution. The invocation of dispute resolution does not stay the accrual of stipulated penalties under this Consent Order.

XXIV. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION

88. Within 30 days of the effective date of this Consent Order, Respondent shall establish and maintain financial security initially in the amount of one million dollars in one of the following forms:

(a) A surety bond guaranteeing performance of the work required of Respondent under this Consent Order;

(b) One or more irrevocable letters of credit equaling the total estimated cost of the work required of Respondent under this Consent Order;

(c) A trust fund;

(d) An unconditional written guarantee in favor of the United States to perform the work required of Respondent under this Consent Order, issued by one or more parent corporation or subsidiaries, or by one or more unrelated corporation that have a substantial business relationship with the Respondent provided, that Respondent shall demonstrate that such corporation or subsidiary satisfies the general requirements of 40 C.F.R. §264.143(f).

Synopsis of changes for my internal use only:

¶25.A.1. The Work Plan is due within 30 days of gaining access instead of 60 days from the effective date of the order.

¶50. Time for access is enlarged to 60 days.

¶60 now includes provision for informal negotiation and the last two sentences reflect our agreement that the informal negotiation period is not exempt from stipulated penalties.

¶88. As per my conversation with Sharon yesterday, I have included language to the effect that the general provisions of Part 264.143(f) will be applicable to the instant RI/FS. [Part 264.143 was in connection with RCRA closures.]

To the best of my knowledge, I have covered all issues except the ones that you said you have relating to the RI/FS Scope of Work. Please call me at 212-637-3148 ASAP if you have any questions.

P.S. I have not received any fax from you so far relating to your agreement with Joel Singermann on the Scope of Work.